

THE STATE OF ARIZONA
CITIZENS CLEAN ELECTIONS COMMISSION

REPORTER'S TRANSCRIPT OF PUBLIC MEETING

Phoenix, Arizona

July 27, 2006

9:30 a.m.

Reported By:

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Certified Reporter (AZ 50127)

Draft Copy

Miller Certified Reporting

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1 A PUBLIC MEETING, BEFORE THE CITIZENS CLEAN
 2 ELECTIONS COMMISSION, convened at 9:30 a.m. on July 27,
 3 2006, at the State of Arizona, Clean Elections
 4 Commission, 1616 W. Adams, Conference Room, Phoenix,
 5 Arizona, in the presence of the following Board members:
 6 Ms. Marcia Busching, Phoenix, Chairperson
 7 Mr. Gary Scaramazzo, Page, Teleconference
 8 Ms. Ermila Jolley, Yuma, Teleconference
 9 Mr. Carl Kunasek, Maricopa, Teleconference
 10 Ms. Royann J. Parker, Pima
 11 OTHERS PRESENT:
 12 Mr. Todd Lang, Executive Director
 13 Ms. Paula Ortiz, Executive Assistant
 14 Ms. Colleen McGee, Deputy Director
 15 Mr. Michael Becker, Voter Education Manager
 16 Mr. Daniel Ruiz II, Campaign Finance Manager
 17 Mr. Eric Peterson, Administrative Counsel
 18 Ms. Christina Murphy, Administrative Assistant
 19 III
 20 Ms. Diana Varela, Assistant Attorney General
 21 Mr. Eric Ehst, Clean Elections Institute
 22 Ms. Nancy Read, Secretary of State's Office
 23 Mr. Brian Wendel, Off Madison Avenue
 24 Mr. Jacob Shuler, Legal Intern
 25 Mr. Andy Gordon, Attorney for Janet Napolitano
 Mr. Christian Palmer, Arizona Capitol Times
 Mr. Larry Fester, Fester & Chapman, P.C.
 Ms. Karissa Maraim, Arizona Republic
 Mr. Mah Bensen, Arizona Republic
 Mr. Garrick Taylor, AZ GOP
 Mr. Chris Trendler, AZ GOP
 Mr. Glenn Hamer, AZ GOP
 Ms. Jan Brewer, Secretary of State

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P R O C E E D I N G

1 CHAIRPERSON BUSCHING: Good morning, everyone.
 2 I'll call this meeting to order. It's the Citizens
 3 Clean Election Commission. We're at 1616 West Adams,
 4 Suite 110, Phoenix, Arizona 85007. Today is July 27th,
 5 Thursday, 2006 at 9:30 a.m.
 6 I want to announce that the Commission may vote
 7 to go into executive session which will not be open to
 8 the public for any item listed on the agenda for
 9 obtaining legal advice. All items on the agenda may be
 10 discussed, considered, and are subject to action by the
 11 Commission.
 12 I'm Marcia Busching, Chairman of the
 13 Commission. I've already called the meeting to order,
 14 and so we'll move to Item II on the agenda, approval of
 15 the July 13th, 2006 Commission meeting minutes. Are
 16 there any additions or corrections?
 17 COMMISSIONER KUNASEK: None from Carl.
 18 CHAIRPERSON BUSCHING: Okay. If there are
 19 none, the Chair will entertain a motion.
 20 MR. SCARAMAZZO: So moved.
 21 COMMISSIONER PARKER: Second.
 22 CHAIRPERSON BUSCHING: It's been moved by
 23 Commissioner Scaramazzo and seconded by Commissioner

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1 Parker that we accept the July 13th, 2006 minutes as
 2 prepared. All in favor say, "aye."
 3 (Chorus of ayes.)
 4 CHAIRPERSON BUSCHING: Opposed, nay?
 5 Chair votes aye. Motion carries.
 6 And, obviously, we have Commissioner Parker and
 7 Commissioner Busching that are present and the other
 8 three Commissioners attending by telephone.
 9 Moving to Item III, Executive Director's
 10 report. Mr. Lang?
 11 MR. LANG: Thank you, Madame Chair. Good
 12 morning, Commissioners.
 13 COMMISISONER KUNASEK: Good morning.
 14 MR. LANG: You have my report and I've updated
 15 it to reflect the most recent data. There are nine
 16 debate videos on the Web. We're getting universal
 17 positive feedback on that. Folks really like that
 18 because it's often hard to attend a debate, as you know,
 19 and so people like the convenience of being able to look
 20 at it. So I think that's a very positive change.
 21 There will be about four more on the Website by
 22 tomorrow. So it's expanding all the time.
 23 As you can see, I'm very excited about the new
 24 personnel changes we've made. Our Deputy Director is
 25 our long-time backbone Colleen McGee and we're very

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1 excited to have her in that leadership position. She's
 2 clearly qualified and capable and she's doing a great
 3 job.
 4 COMMISSIONER KUNASEK: Congratulations,
 5 Colleen.
 6 MS. MCGEE: Thank you, Commissioner.
 7 CHAIRPERSON BUSCHING: And replacing Colleen is
 8 Christina Murphy. She's about to get her MBA and she
 9 will be our Fiscal Service Manager and I'm really happy
 10 to have her.
 11 Participation. You have the numbers there.
 12 That, again, amounts to what's it been relative
 13 throughout the cycle, about 65 percent. You also should
 14 have a matching funds chart where staff has broken down
 15 how the matching funds were awarded. And you can see
 16 that it was all from spending by non-participating
 17 opponents in four different races.
 18 COMMISSIONER KUNASEK: On that matching fund
 19 chart, if I could ask a question, the last candidate,
 20 David Jorgenson, how do you determine the amount that
 21 should be matched when there are two other candidates in
 22 that race that have exceeded the expenditure?
 23 MR. LANG: Mr. Chair, Madame -- Madame Chair,
 24 Commissioners Kunasek, you match them both.
 25 COMMISSIONER KUNASEK: You match them both?

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1 MR. LANG: Because I suppose the idea in the
 2 statute is you need to respond to the speech by both
 3 candidates.
 4 COMMISSIONER KUNASEK: Is that then -- is it
 5 accumulated?
 6 MR. LANG: That's right.
 7 COMMISSIONER KUNASEK: So -- so Jorgenson gets
 8 the difference between what he should be -- what he has
 9 received from Clean Elections and what Opponent Number
 10 One has contributed and then the same for Opponent
 11 Number Two and add that together?
 12 MR. LANG: That's right.
 13 COMMISSIONER KUNASEK: That's a pretty good
 14 deal.
 15 MR. LANG: Yeah.
 16 CHAIRPERSON BUSCHING: Well, yes, the overage.
 17 Not the total.
 18 COMMISSIONER KUNASEK: Yeah, the difference.
 19 CHAIRPERSON BUSCHING: Okay.
 20 MR. LANG: That's right.
 21 Moving --
 22 COMMISSIONER KUNASEK: Thank you.
 23 MR. LANG: Moving on. The candidate statement
 24 pamphlets have been -- most of you should have received
 25 yours by now. They've been going out. And the feedback

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1 has been very good. There are concerns from some folks
 2 that it's in English and Spanish. But I'll just remind
 3 Commissioners that that, of course, is required by the
 4 Voting Rights Act. It's federal law and we have no
 5 control or discretion in that area. But other than
 6 that, the feedback have been very good. People
 7 certainly appreciate having that information.
 8 One of the interesting -- the feedback that
 9 we've received is folks would like to have pamphlets
 10 just for their district, because, of course, that's a
 11 lot of information in there. But this came up several
 12 years ago with the Commission and it's just
 13 prohibitively expensive to do it in that fashion.
 14 COMMISSIONER KUNASEK: Todd, one other issue on
 15 that point is I paged through the entire pamphlet
 16 looking for a map of the state identifying the
 17 districts, so that if you see the candidate you can look
 18 -- or you can look at your own district and see who your
 19 candidates are.
 20 MR. LANG: We provide information on how you
 21 can find out more information. But that's probably a
 22 good suggestion. We are considering some format
 23 changing for the general election. Mike Becker is
 24 already working on that because, as you know, it's a big
 25 project. We can add that to our list of our

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1 considerations and if it can be done, we'll do it.
 2 COMMISSIONER KUNASEK: Thank you.
 3 MR. LANG: You see there also is a list of all
 4 the debates. There are several remaining. Attendance
 5 is up. And there's one workshop left on August 2nd. So
 6 tell your friends and family to get out there, August
 7 2nd is the last workshop.
 8 And also in your packet you should have a
 9 report regarding incumbency and money in elections.
 10 I had it but I took it out of my folder. Thank
 11 you.
 12 And this is by Mark Dixon. And it's by the
 13 Money in State Politics Institute. So, it's an
 14 interesting report -- thank you, Commissioner Parker.
 15 It's an interesting report and worth reading.
 16 Also, some issues were raised regarding what
 17 kind of information is available to voters and -- on the
 18 Websites. And I'm pleased to tell you that Colleen
 19 McGee our IT person is meeting with the Secretary of
 20 State's IT folks next week and they've been quite
 21 responsive and helpful. So, we look forward to
 22 resolving those issues quickly. They're happy to work
 23 with us and we look forward to moving forward.
 24 CHAIRPERSON BUSCHING: And that includes the
 25 issue of posting the amended campaign finance reports?

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1 MR. LANG: That's one of the primary issues,
 2 yes, Madame Chair.
 3 Enforcement. The update is there are now six
 4 complaints total. You see there's two new complaints,
 5 one against Len Munsil -- we do have his reply, we
 6 received it yesterday. So that will be on the agenda
 7 for the next meeting which I believe is August 10th.
 8 And we're waiting for Mr. Nelson's reply and we expect
 9 that shortly. That will also be on the agenda for the
 10 next meeting.
 11 And with that, that concludes my report.
 12 CHAIRPERSON BUSCHING: And back on the meetings
 13 and software updates, I wanted to report that I asked
 14 Mr. Lang to confirm, we had sent a letter to the
 15 Secretary of State last August asking for various
 16 software updates and Secretary of State Brewer had sent
 17 a letter back saying once that it would be completed in
 18 the near future. And I asked Mr. Lang to confirm, in
 19 fact, that all of those were made. And he did confirm
 20 for me that every one that was listed in the Secretary
 21 of State's letter of August or July, whatever it was,
 22 has been taken care of. So I'm pleased about that.
 23 Any other questions for Mr. Lang?
 24 COMMISSIONER JOLLEY: I have a question.
 25 CHAIRPERSON BUSCHING: Commissioner Jolley?

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1 COMMISSIONER JOLLEY: Yes, I --
 2 THE COURT REPORTER: I'm sorry, Commissioner.
 3 CHAIRPERSON BUSCHING: Commissioner Jolley, you
 4 need to get closer. We're having a hard time hearing
 5 you.
 6 COMMISSIONER JOLLEY: Okay. I just wanted to
 7 state -- can you heard me now?
 8 CHAIRPERSON BUSCHING: Yes.
 9 COMMISSIONER JOLLEY: I really appreciated the
 10 candidate pamphlet that was mailed out with all the
 11 candidates' statements. I appreciate reading about all
 12 the candidates in all the districts.
 13 CHAIRPERSON BUSCHING: Good. Thank you.
 14 COMMISSIONER JOLLEY: Thank you.
 15 CHAIRPERSON BUSCHING: Any other questions or
 16 comments from Mr. Lang?
 17 If not, we'll move to Item IV on the agenda,
 18 consideration and possible approval of preliminary audit
 19 report in MUR 06-0001, Janette Napolitano. Mr. Lang?
 20 MR. LANG: Thank you, Madame Chair and
 21 Commissioners. You have before you the report --
 22 preliminary report prepared by Fester & Chapman, the
 23 CPAs we engaged for the purpose of auditing the
 24 Napolitano Campaign. Mr. Fester kindly agreed to be
 25 here today so that if you have questions, he's happy to

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1 answer them.
 2 A brief overview of how audits work because
 3 there's been some questions about what's going to be
 4 discussed today. The merits of whether there was a
 5 violation or not are not on the agenda today. If you
 6 look at Article 4 which governs audits under the
 7 Commission rules, there's two things you can do which is
 8 either an audit or an examination.
 9 And actually, this particular investigation by
 10 Fester & Chapman is more on the line of an examination.
 11 They're there to look into the Napolitano CFRs and
 12 determine when they received their money, how much money
 13 they had on hand each day for the day there was an
 14 issue, and how much they spent each day. They're also
 15 --
 16 Well, let me move on to the way this works.
 17 So, when you have this examination under Rule 404, the
 18 first thing you receive is a preliminary audit report.
 19 That's what you have here today. It's on the agenda for
 20 the Commission to approve. Once the Commission has done
 21 that, the candidate -- in this case the Napolitano
 22 Campaign -- has 10 days to respond. And then, of
 23 course, the auditors can take into account the concerns
 24 or suggestions raised by Napolitano as well as the
 25 Commission.

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1 And then there will be a final audit report
 2 which we expect to have at the August 10th meeting which
 3 will have the final view of what happens. Once the
 4 Commission has approved the final audit report, we then
 5 proceed to get an evaluation as to whether or not
 6 there's been a violation. So, that's how the procedure
 7 works.
 8 So you have here your preliminary audit report
 9 and in it you've seen what they've done. They've gone
 10 through and confirmed that the Napolitano Campaign
 11 complied with the rules regarding the campaign finance
 12 report and went and determined when they received
 13 various donations -- and in this case seed money
 14 donations -- and when expenditures took place.
 15 They also contacted other vendors and providers
 16 to determine fair market value of the Websites for that
 17 early March period. And you see that information is in
 18 there as well at Exhibit C, which I believe is the last
 19 page. And that's, you know, the important bit of
 20 information. You see how much the initial Website will
 21 be worth, and how much the hosting will be worth, and
 22 that sort of thing.
 23 We don't have the final numbers because, of
 24 course, the other issue is the determination regarding
 25 the overall value of the contract and whether or not

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1 they had money on hand. That's something that once we
 2 have the audit in the final form, staff will take that
 3 audit and make a recommendation to the Commission based
 4 on the information received.
 5 CHAIRPERSON BUSCHING: Mr. Lang, in your
 6 talking, when I read it the first time I didn't realize
 7 this, but it appears that this draft is missing Exhibit
 8 A; or am I just not finding it?
 9 MR. LANG: It appears -- I see what you mean.
 10 Yeah, you're right. It is missing A.
 11 CHAIRPERSON BUSCHING: Did you say that the
 12 accountants were here today?
 13 MR. LANG: Yeah, Mr. Fester is here.
 14 MR. FESTER: Exhibit A is the list of
 15 agreed-upon procedures that we performed.
 16 CHAIRPERSON BUSCHING: Do you have a copy?
 17 MR. FESTER: Yes, I do. And they were
 18 substantially reiterated in the body of the report, but
 19 this list of procedures --
 20 CHAIRPERSON BUSCHING: Could you come forward
 21 so people can hear you, please?
 22 MR. FESTER: Yes.
 23 CHAIRPERSON BUSCHING: And state your name.
 24 MR. FESTER: My name is Larry Fester. I'm with
 25 Fester & Chapman.

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1 CHAIRPERSON BUSCHING: Thank you.
 2 MR. FESTER: Exhibit A in the final report will
 3 consist of the list of what's called Procedures, the
 4 scope of work. It's the agreed-upon procedures that we
 5 would perform. And the procedures are substantially
 6 reiterated in the body of the report. But, this will be
 7 part of the final report.
 8 Did you want me to explain a little bit more
 9 about that?
 10 CHAIRPERSON BUSCHING: Yeah, if you could.
 11 MR. FESTER: Well, I can briefly go through
 12 these.
 13 CHAIRPERSON BUSCHING: Please.
 14 MR. FESTER: Contributions. Independent
 15 Accountant shall determine whether any individual donor
 16 made cumulative contributions to Respondent in excess of
 17 \$120.
 18 B. Independent Accountant shall determine the
 19 amount of contributions received by Respondent on each
 20 day during the period beginning March 1st and ending
 21 March the 22, 2006.
 22 C. Independent Accountant shall determine the
 23 cumulative amount of contributions received by
 24 Respondent each day during the period of March 1st, 2001
 25 [sic] through 2006.

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1 mostly goes up with a couple of downs, but never drops
 2 below that amount, and ends up at \$36,588.42 at the end
 3 of the period.
 4 MR. LANG: Madame Chair, we're having copies
 5 made.
 6 MR. FESTER: Then on the -- so that -- that, in
 7 essence, lists the procedures that were performed in
 8 order to come up with Exhibit B.
 9 Do you want me to talk about the other one then
 10 too?
 11 CHAIRPERSON BUSCHING: Please.
 12 MR. FESTER: Okay. Exhibit C(1) and C(2),
 13 those are in response to Procedures 3, which is goods
 14 and services provided by Vendor.
 15 Under 3(A) is Independent Accountant shall
 16 determine the nature of Website design and hosting,
 17 including without limitation: (i) to the extent to
 18 which the Website was custom designed or based on
 19 templates; (ii) the nature of any content management
 20 systems and other components incorporated into the
 21 Website; (iii) nature of any modifications of the
 22 Website; and (iv) the nature and scope of hosting
 23 services provided by Vendor; provided to Respondent by
 24 Vendor through each day during the period of March 1st,
 25 2006 and ending March 22, 2006.

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1 And those are the findings that then appear in
 2 the first two columns of Exhibit B.
 3 Expenditures. Independent Accountant shall
 4 determine the amount of expenditures (exclusive of
 5 expenditures for goods and services provided by Vendor)
 6 -- Vendor is the term for the Website Host -- made by
 7 Respondent on each day during the period of March 1st,
 8 2006 and ending March 22, 2006.
 9 Independent Accountant shall determine the
 10 cumulative amount of expenditures made by Respondent
 11 through each day during the same period.
 12 Those then would be the next two columns, the
 13 third and fourth columns, "Disbursement Date" and
 14 "Disbursement Amounts".
 15 Then I'm going to skip on to number four.
 16 Number three is Vendor, that's the Website part of it.
 17 Four is Cash on Hand. Independent Accountant
 18 shall determine whether the amount by which the
 19 cumulative amount of expenditures (exclusive of
 20 expenditures for goods and services provided by Vendor)
 21 made by the Respondent were greater or less than the
 22 cumulative amount of contributions received during the
 23 period under examination.
 24 That would be the final column, End of Day
 25 Balance. Which starts out with \$2,573 on March 1st and

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1 That's a long sentence. It's kind of hard to
 2 process that whole thing, you know, in one reading.
 3 Second step is: Independent Accountant shall
 4 determine the nature of other goods and services
 5 provided by [sic] Respondent to [sic] Vendor through
 6 each day during the period under examination.
 7 And C is: Independent Accountant shall contact
 8 other vendors in the business of providing to political
 9 campaigns comparable Website design and hosting and
 10 other goods and services to prepare an estimate of: (i)
 11 the fair market value of each of the component elements
 12 (that is Website design, hosting, e-mail campaign
 13 consulting) provided to Respondent by Vendor for each
 14 day of the period; and (ii) if it is commercially
 15 reasonable for a vendor to offer as a package the types
 16 of goods and services provided to Respondent by Vendor,
 17 the fair market value of a package of such goods and
 18 services through each day during the period.
 19 In essence, what we were doing is contacting
 20 other vendors in order to come up with pricing for
 21 comparable services that were received for the Website,
 22 to come up with an estimate of the cost, to see if the
 23 cost was paid to the -- to the vendor was reasonable,
 24 and to reach a value on that and that is shown on
 25 Exhibit C(2).

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1 And Exhibit C(1) talks about some of the
2 reasons why we weren't quite able to do everything that
3 this asked for.

4 And do you want me to continue with that to
5 clarify or do you want me to wait and ask for questions?

6 CHAIRPERSON BUSCHING: Go ahead.

7 MR. FESTER: It wasn't possible to come up with
8 an exact comparable offering of services because there
9 were no other vendors that we could locate which would
10 provide the same service, mainly a list of -- an e-mail
11 list of potential contributors. No one else had that to
12 offer.

13 MR. LANG: May I explain?

14 MR. FESTER: Yes.

15 MR. LANG: The issue there is generally
16 campaigns buy Web lists or e-mail lists, or rent e-mail
17 lists and actually get physical control of the listing.
18 And this particular vendor used by the Napolitano
19 Campaign doesn't do that. They keep it as proprietary
20 information and send out the list, thus decreasing the
21 value of the list to the campaign because they don't get
22 to keep those names but also decreasing the price.

23 So, that -- that's -- and we -- the accounting
24 firm could find no other vendors who do it in that
25 fashion.

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1 CHAIRPERSON BUSCHING: Okay.

2 MR. FESTER: I think we couldn't find any other
3 vendors who had the information either. The -- in other
4 cases I think we determined that the campaigns would
5 have to develop that Website -- the e-mail contacts on
6 their own and supply them to the vendor.

7 CHAIRPERSON BUSCHING: Okay. All right. And
8 then there was a final item or did you cover that?

9 MR. FESTER: C was the last column, that's Cash
10 Balance on Hand. That's the far, right-hand column on
11 Exhibit A.

12 CHAIRPERSON BUSCHING: Okay. Are there
13 questions for Mr. Fester?

14 COMMISSIONER JOLLEY: I have a question,
15 Chairman Busching. Can you hear me?

16 CHAIRPERSON BUSCHING: Yes, Commissioner
17 Jolley?

18 COMMISSIONER JOLLEY: Would that e-mail listing
19 be purchased from the political affiliated party itself
20 or is it something that's developed by the Vendor?

21 MR. FESTER: Well, in this case, from what we
22 understand, it was developed by the Vendor.

23 MR. LANG: That's my understanding too.

24 CHAIRPERSON BUSCHING: Okay.

25 COMMISSIONER JOLLEY: Thank you.

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1 CHAIRPERSON BUSCHING: Any other questions for
2 Mr. Fester?

3 MR. FESTER: And to kind of clarify that. And
4 the list never became property of the Respondent, the
5 Napolitano Campaign. And they were not permitted also
6 to have the information. They didn't have access. I
7 don't think they even had access to that information
8 directly.

9 CHAIRPERSON BUSCHING: Okay. Any other
10 questions of Mr. Fester?

11 COMMISSIONER KUNASEK: None from Carl.

12 CHAIRPERSON BUSCHING: Okay. Is there any
13 member of the public that wishes to speak to this
14 matter?

15 Okay -- yes.

16 MR. HAMER: Yes. Hi, Glenn Hamer, the
17 Executive Director of the Arizona Republican Party.

18 I appreciate the opportunity to speak this
19 morning and I have also reviewed the audit. I just want
20 to make a couple of brief points so that we may submit a
21 statement for the record.

22 From all of the evidence that has occurred thus
23 far, it's clear that an expenditure occurred before Ms.
24 Napolitano filed her campaign -- her campaign
25 organizational paperwork on March 1, 2006. Thus it

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1 would be impossible for there to have been sufficient
2 funds to cover the work that was done on the
3 sophisticated Web operation that IWS put together and
4 was launched and available to the public March 1st.
5 It's simply impossible that all that effort was done on
6 the date that she launched her paperwork.

7 My second point, and this is from all of the
8 information that's already been submitted, the contract
9 on March 15th -- I believe it was March 15th -- between
10 the Napolitano Campaign and IWS included a 75 percent
11 termination clause. And that value was a 25 thousand --
12 excuse me, I believe it was 20 thousand -- \$20,675 which
13 was 75 percent of the total value of the IWS Web
14 package.

15 It's our contention that you do not -- that the
16 expenditure for this sweep of services occurred before
17 March 1st, 2006. And that the amount that would have
18 had to have been available before March 1st, 2006 would
19 have been impossible to have happened since there wasn't
20 even a campaign committee. It would have at least had
21 to have been approximately \$20,000 and -- \$20,675, which
22 would have been impossible.

23 The March 15th contract makes it very clear
24 that this was a very sophisticated operation. IWS, I
25 don't want to sound like a campaign commercial, but most

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1 people know that's one of the top Internet vendors in
2 the country, which is probably one of the reasons you
3 weren't able to find some of the comparable services.

4 But to me, the appropriate -- couple of
5 appropriate questions that I believe the Commission will
6 have to look at before it makes any final recommendation
7 is, when -- when did that expenditure occur and when did
8 work begin? Because I -- I believe it's a fath -- it's
9 a far assumption to believe that actual work began
10 before March 1, 2006, that an expenditure occurred
11 before that date; and, therefore, the bare minimum in
12 terms of a baseline of any penalty the Commission should
13 offer or -- or -- or could -- could come down with
14 should be based on the 75 percent termination cost of
15 the IWS Website which was \$20,000 -- approximately
16 \$20,000.

17 That's my statement.

18 CHAIRPERSON BUSCHING: Thank you. Are there
19 any questions of Mr. Hamer?

20 Thank you, sir.

21 COMMISSIONER KUNASEK: Carl Kunasek. I do not
22 have any questions of Mr. Hamer at this time. I think
23 his statement probably would be more fitting at the
24 hearing on the -- on the complaint. The draft that
25 we're reviewing right now is before us, to expand beyond

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1 that might be a violation of the agenda issue. But I do
2 think his comments are probably more appropriate at the
3 meeting where the issue is discussed.

4 CHAIRPERSON BUSCHING: Okay. Thank you.

5 MR. HAMER: If I've gone outside of the scope,
6 I do apologize.

7 CHAIRPERSON BUSCHING: And you're welcome to
8 come back.

9 MR. HAMER: Thank you.

10 CHAIRPERSON BUSCHING: Anyone else wish to
11 speak to this matter?

12 Mr. Gordon?

13 MR. GORDON: Thank you. Andy Gordon for the
14 Napolitano Campaign.

15 I am going to make a point of not responding to
16 what Mr. Hamer just said, because I believe Commissioner
17 Kunasek is correct. Clearly it goes to the merits. We
18 disagree. We'll deal with that later. If any of the
19 Commissioners feel different and want a response from us
20 to what Mr. Hamer has said, I'm here. But I agree with
21 Mr. Kunasek it's more appropriate later.

22 CHAIRPERSON BUSCHING: I have a question before
23 you leave the table, and I want to ask it of Mr. Lang
24 and maybe you'll want to respond as well, and that is,
25 one of the points raised by Mr. Hamer was that there

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1 appeared to have been perhaps contributions and/or
2 expenditures prior to March 1st of 2006. And, yet, in
3 looking at the procedures that we directed to the
4 auditor, we specifically told them only to start looking
5 on March 1st.

6 Should we revise that and ask them to look
7 prior to March 1st?

8 MR. LANG: Madame Chair, Commissioners, I can
9 look into that and I'll give the Commission feedback. I
10 made that determination based on my view of what the
11 difference between drafts where one is obligated to make
12 payments and final audits. But, given the Commission
13 instructions, I can look into that and ask the auditors
14 to revisit.

15 CHAIRPERSON BUSCHING: And if we do, can we
16 approve the audit today or -- the preliminary audit or
17 not?

18 MR. LANG: You can approve it and also make
19 suggestions as to additional issues you would like to
20 see in the final version.

21 CHAIRPERSON BUSCHING: And Mr. Gordon, do you
22 want to comment on that?

23 MR. GORDON: One further comment. As I assume
24 everyone in the room is aware, the Commission to the
25 extent that the complaint filed by the Republican Party

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1 raises issues that there were expenditures that occurred
2 prior to the filing of the statement of organization,
3 that is an issue that has been referred by the Secretary
4 of State's Office to the Attorney General's Office,
5 because it involves an alleged violation under a
6 different title under the election law. Which, with all
7 due respect, this Commission doesn't have jurisdiction.
8 The Secretary -- the Attorney General does.

9 And -- and if you begin mixing those, then it's
10 going to become very difficult to unravel it and we'll
11 just be in here arguing lack of jurisdiction.

12 I don't know if that helps, Commissioner
13 Busching.

14 CHAIRPERSON BUSCHING: It helps but it also
15 seems like, how do you unravel it then?

16 MR. GORDON: Well, let me be clear on this, to
17 the extent the Commission -- the Commission believes an
18 expenditure took place prior to filing the Statement of
19 Organization, this Commission has no jurisdiction over
20 that question. It just -- if Diana can help me, I
21 didn't bring my election code with me, but that's the
22 first title of the election laws and this is in the
23 second title. It's a jurisdictional question.

24 CHAIRPERSON BUSCHING: Okay. I guess I'm
25 wondering, Ms. Varela, is this something that we should

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1 talk about getting legal advice as to whether we should
2 change the scope of the audit on the dates or not? Or
3 do you we think we're appropriate leaving them the same
4 dates?

5 MS. VARELA: Well, certainly we can look into
6 that. I don't think I would be prepared to answer your
7 question right now but I can look into that.

8 But Andy is correct that the violation -- an
9 alleged violation of whether she did something, whether
10 she made expenditures or contributions prior to March 1,
11 which is the date she filed her Statement of
12 Organization, those allegations fall under Article One,
13 Title 16 which is the Secretary of State's jurisdiction.
14 Article 2 is the Commission.

15 So I agree with Mr. Gordon, but I also agree
16 they're somewhat intertwined. So, to the extent that
17 you would want me to answer that question, I would not
18 be prepared to do it today. But I can certainly look
19 into that and provide information to either Todd or come
20 back to the Commission.

21 CHAIRPERSON BUSCHING: Mr. Fester, you want to
22 say something?

23 MR. FESTER: Yes. I want to interject
24 something. I don't know if it's proper at this point.
25 But I understand the concept; however, I think that to

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1 try to establish whether there was a contract -- which
2 is a legal term -- prior to March 15th or March 1st, it
3 would be more in the area of forensic work that would be
4 done by attorneys, private investigators, that sort of
5 thing. It would have to have, I think, would have to be
6 dealing with conversations that took place prior to the
7 date of the actual contract being signed, so that in
8 effect you had an agreement type of contract and is
9 provable or not.

10 So, I always try to think through to the final
11 product. We have procedures that we're to perform and
12 we have to conceive of the final product. And I
13 don't -- I can't quite get my head around how we would
14 get to that final product. So it might be something
15 that would be very difficult to do and might be better
16 to approach in a better way --

17 CHAIRPERSON BUSCHING: Okay.

18 MR. FESTER: -- than to try to ask accountants
19 slash auditors to do that.

20 CHAIRPERSON BUSCHING: All right. Thank you.

21 MR. FESTER: Does that make sense to you?

22 CHAIRPERSON BUSCHING: I understand.

23 COMMISSIONER KUNASEK: Excuse me, Chairman
24 Busching.

25 CHAIRPERSON BUSCHING: Yes, Commissioner

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1 Kunasek?

2 COMMISSIONER KUNASEK: This is Carl. I'm going
3 to have to take leave at this moment in time and I'll
4 report back in when I'm back.

5 CHAIRPERSON BUSCHING: Okay. Thank you.

6 Any other questions for Mr. Gordon?
7 Thank you, sir.

8 MR. GORDON: Thank you. Thank you for allowing
9 me to address you.

10 CHAIRPERSON BUSCHING: Any other members of the
11 public wish to speak to this matter?

12 If not, we'll turn to discussions and questions
13 by members of the Commission.

14 COMMISSIONER JOLLEY: Chairperson Busching,
15 this is Commissioner Jolley. Can you hear me?

16 CHAIRPERSON BUSCHING: Yes, go ahead.

17 COMMISSIONER JOLLEY: I just wanted to ask, so
18 basically we are either approving or disapproving the
19 preliminary audit report as presented by Fester &
20 Chapman to the Commission and the procedures that they
21 followed?

22 CHAIRPERSON BUSCHING: That's correct.

23 COMMISSIONER JOLLEY: So they will be at the
24 next meeting, or after the investigation or the
25 examination is completed, then they would give us a

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1 qualified opinion or a nonqualified opinion?

2 CHAIRPERSON BUSCHING: I don't think they're
3 going to give any opinion other than what you see in the
4 current draft audit report.

5 COMMISSIONER JOLLEY: Okay. Thank you very
6 much.

7 CHAIRPERSON BUSCHING: Correct me if I'm wrong.

8 MR. LANG: That's my understanding, Madame
9 Chair.

10 CHAIRPERSON BUSCHING: Any other questions or
11 comments?

12 Commissioner Parker?

13 COMMISSIONER PARKER: Is it possible or
14 permissible for us to get, not names of people who
15 donated, but just a list of how many checks they had,
16 dollar amounts, so we can see what was generated and
17 disbursements to know where that money was going to?

18 CHAIRPERSON BUSCHING: Yes, indeed. I mean, in
19 fact, if you look on Exhibit B it says that.

20 COMMISSIONER PARKER: It shows dollars. It
21 doesn't show --

22 CHAIRPERSON BUSCHING: But down at the bottom
23 they said they created a spreadsheet, so we could ask as
24 part of the audit report to have that spreadsheet
25 included.

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1 COMMISSIONER PARKER: Okay.
 2 CHAIRPERSON BUSCHING: Okay. The Chair will
 3 entertain a motion.
 4 COMMISSIONER SCARAMAZZO: I move to approve the
 5 preliminary audit as provided.
 6 CHAIRPERSON BUSCHING: Is there a second?
 7 COMMISSIONER JOLLEY: I will second that.
 8 CHAIRPERSON BUSCHING: It's been moved by
 9 Commissioner Scaramazzo and seconded by Commissioner
 10 Jolley that we approve the preliminary audit report as
 11 provided.
 12 I would like to make, hopefully, two friendly
 13 amendments to that motion: One, that the Exhibit A
 14 definition and agreed-upon procedures be included; and
 15 two, the spreadsheet that Commissioner Parker just
 16 talked about also be included, and the spreadsheet not
 17 only include the receipts but the expenditures.
 18 Are those modifications acceptable to you,
 19 Commissioner Scaramazzo?
 20 MR. SCARAMAZZO: That's fine.
 21 CHAIRPERSON BUSCHING: And you, Commissioner
 22 Jolley?
 23 COMMISSIONER JOLLEY: Yes. That's fine.
 24 CHAIRPERSON BUSCHING: Okay. Any other
 25 discussion?

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1 CHAIRPERSON BUSCHING: Opposed, nay?
 2 Chair votes aye. Motion carries.
 3 COMMISSIONER KUNASEK: I just walked in the
 4 room just as you were voting and I would have voted aye.
 5 CHAIRPERSON BUSCHING: Okay. Thank you.
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 7 (Whereupon the proceeding concludes at 10:08
 8 a.m.)
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1 If not, the Chair will call for the question,
 2 all in favor of the approval of the preliminary audit
 3 report with the two additions to it say, "aye."
 4 (Chorus of ayes.)
 5 CHAIRPERSON BUSCHING: Opposed, nay?
 6 Chair votes aye.
 7 And I note that Commissioner Kunasek is
 8 temporarily unavailable and did not vote on this matter.
 9 Okay. We'll move to Item V on the agenda, call
 10 for public comment. This is the time for consideration
 11 and discussion of comments and complaints from the
 12 public. Action taken as a result of public comment will
 13 be limited to directing staff to study the matter or
 14 rescheduling the matter for further consideration and
 15 decision at a later date or responding to criticism.
 16 Is there anyone from the public that wishes to
 17 comment?
 18 If not, we'll move to Item VI. Is there a
 19 motion for adjournment?
 20 COMMISSIONER JOLLEY: I'll make that motion.
 21 MR. SCARAMAZZO: So moved.
 22 CHAIRPERSON BUSCHING: It's been moved by
 23 Commissioner Jolley and seconded by Commissioner
 24 Scaramazzo that we adjourn. All in favor say, "aye."
 25 (Chorus of ayes.)

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1 C E R T I F I C A T E
 2
 3 I, Angela Furniss Miller, Certified Reporter,
 4 do hereby certify that the foregoing pages numbered 1
 5 through 32, inclusive, constitute a full and accurate
 6 printed record of my stenographic notes taken at said
 7 time and place, all done to the best of my skill and
 8 ability.
 9 DATED, at Phoenix, this 31st day of July,
 10 2006.
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 15 Angela Furniss Miller, RPR
 16 Certified Reporter (AZ50127)
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